

**CALIFORNIA DEPARTMENT OF FISH AND GAME**  
4949 Viewridge Avenue  
San Diego, California 92123

Notification No. 5-2002-0187  
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**AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION**

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Randy Sanchez of the State of California, Department of Transportation, District 11, 2829 Juan Street, San Diego, CA 92186, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1601 of California Fish and Game Code, the Operator, on the 5th day of June, 2002, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of, the following water(s): unnamed tributary to the Tijuana River, San Diego County, California, (Section 36, Township 18S, Range 1W, Otay Mesa Quad.).

WHEREAS, the Department (represented by Pam Beare through a site visit on the 12th day of April, 2002) has determined that such operations may substantially adversely affect those existing fish and wildlife resources within unnamed tributary to the Tijuana River, specifically identified as follows: reptiles: western fence lizard (*Sceloporus occidentalis*); birds: red-winged blackbird (*Agelaius phoeniceus*), bushtit (*Psaltirparus minimus*), white-crowned sparrow (*Zonotrichia leucophrys*), Anna's hummingbird (*Calypte anna*), unidentified raptor; riparian vegetation which provides habitat for those species: arroyo willow (*Salix lasiolepis*), broad-leaved cattail (*Typha latifolia*), mulefat (*Baccharis salicifolia*); and all other aquatic and wildlife resources, including that riparian vegetation which provides habitat for such species in the area.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife resources during the Operator's work. The Operator hereby agrees to accept the following measures/conditions as part of the proposed work.

If the Operator's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this Agreement and with other pertinent code sections, including but not limited to Fish and Game Code Sections 5650, 5652, 5937, and 5948, may result in prosecution.

Nothing in this Agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute Department of Fish and Game endorsement of the proposed operation, or assure the Department's concurrence with permits required from other agencies.

This Agreement becomes effective the date of Department's signature and terminates December 31, 2005 for project construction only. This Agreement shall remain in effect for that time necessary to satisfy the terms/conditions of this Agreement.

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1. The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.
2. The Operator proposes to alter the streambed to construct a freeway interchange at the intersection of Siempre Viva Road and State Route 905. The streambed consists of 300 feet of earthen trapezoidal channel that is approximately 15 feet wide at the bottom with 2:1 side slopes. The total area of streambed impact is 0.24 acre, consisting of 0.02 acre of freshwater marsh and 0.22 acre of southern willow scrub.
3. The agreed work includes activities associated with No. 2 above. The project area is located in San Diego County. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, including Habitat Mitigation and Monitoring Plan for the Siempre Viva Road Interchange dated May 8 2002, and shall be implemented as proposed unless directed differently by this agreement.
4. The Operator shall not impact more than 0.24 acre. Mitigation for this impact shall consist of restoration of the same habitat types at a ratio of 3:1. The restoration site and restoration plans shall be submitted to the Department at least 60 days prior to the project's impacts to wetland/riparian vegetation and shall be approved by the Department prior to those impacts. The Operator shall provide a mitigation site that will function as a part of the planned conserved lands within the area. The restoration plan shall: identify the habitat restoration areas; provide an analysis of how the site will function within the larger context of preserved lands; detail the steps that will be taken to restore appropriate habitat(s) and the measures that will be included to ensure success; provide a schedule for initiating and completing the mitigation; identify restoration goals and a monitoring plan sufficient to measure success; include provisions for long-term maintenance and protection of the restored habitats for the benefit of wildlife in perpetuity. The goal of the restoration shall be creation of self sustaining habitats similar in species composition and density to nearby natural habitats, or historical habitats.
5. Maintenance and monitoring of the site shall consist of two phases. Phase 1 shall consist of those activities necessary to create the target habitats and meet the success criteria, such as irrigation at proper intervals, maintenance of the irrigation system, exotics removal, replacement planting, etc. This phase shall continue until the success criteria have been met and the site has been monitored for at least 5 years. Replacement planting done after year 1 shall extend phase 1 for the entire site for 5 years after the last replacement planting is done. Phase 2 shall consist of exotics removal and monitoring to ensure the success criteria continue to be met. Phase 2 shall continue for 5 years after the end of phase 1.
6. An annual report documenting the status of the habitat restoration areas shall be submitted to the Department by Dec. 1 of each year during Phase 1. This report shall include a description of the methods used (methods must be appropriate for evaluating the site relative to the success criteria), the number of plants replaced by species along with the date of replacement, an evaluation of the revegetation effort, a description of any remedial actions that are needed and a schedule for accomplishing those actions, and photos from designated photo stations. The Operator is responsible for replacement planting, maintenance and monitoring until the success criteria are met; maintenance and monitoring shall continue for 5 years after the last replacement planting is done. During Phase 2, the site will be visually evaluated each year for an additional 5 years to determine if it will function without supplemental watering; a brief report of the findings shall be submitted to the Department by Jan. 1 of each year. If there appears to be a decrease in cover during this time, supplemental work, as determined by the Department, may be necessary. If there is disagreement between the Operator and the Department regarding the visual evaluation of cover, the quantitative method previously used to evaluate site success will be used to make the determination. The mitigation site will not be deemed successful until the Department provides written approval.

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7. The goal of the restoration shall be creation of self sustaining habitats with species composition and plant densities similar to nearby natural habitats, or historical habitats. Success criteria shall consist of the following. Areas planted with willow riparian shall have 75% cover of woody species at the end of 3 years and 90% at the end of five years, with a composition similar to the percentages of tree and shrub species planted, and a density no greater than similar natural sites. Freshwater marsh areas shall have 75% cover after 3 years and 90% cover after 5 years. (Percent cover shall not be determined by adding cover for each species, as this method overestimates cover by counting areas where species overlap more than once.)
8. All perennial exotic plants shall be removed prior to initial planting of the site, and any that re-invoke shall be removed, with hand tools or selective spot herbicide treatment, before they set seed. If herbicides are used, only spot treatments that specifically target the foliage of exotic plant species will be allowed. No over spray or runoff to soil will be allowed. Spraying shall be performed under the supervision of a licensed California Certified Pesticide Applicator and all treatment shall strictly follow the herbicide label instructions. Exotic plant removal shall be performed until the site has achieved the success criteria and been monitored for at least 10 years. If any perennial exotic plants are allowed to shed seed, the Operator shall add an additional year to monitoring and exotics removal. There shall be no perennial exotics within the mitigation areas at the end of the 10-year (or greater) maintenance and monitoring period. Cover of annual exotics shall be controlled as necessary to prevent them from limiting the establishment of native species. The Operator shall provide for the removal of perennial exotics in perpetuity so that at no time will perennial exotics occupy more than 5% of the site.
9. Irrigation of the mitigation areas shall be done in a manner that promotes establishment of the desired habitat type, without creating a plant community that will not function well, or persist, once irrigation is removed.
10. All decisions related to the biological attributes or functioning of the site shall be made by the District Biologist, not the Resident Engineer.
11. The Operator shall ensure that those planting and maintaining the site have demonstrated success in restoration, and an understanding of the function, of the target vegetation communities.
12. All plant materials used in wetland/riparian mitigation shall be derived from local stock. Plants from impact areas shall be used for this purpose at much as possible. Propagules collected outside of the impact areas shall be collected in a manner that does not adversely effect the existing habitats.
13. The Operator shall not remove vegetation within the stream from February 15 to September 15 to avoid impacts to nesting birds. However, the Operator may remove vegetation from July 15 through September 15 if a qualified biologist conducts a survey for nesting birds within one week prior to the vegetation removal, and ensures no nesting birds shall be impacted by the project. If nesting birds are present, no work shall occur until the young have fledged and will no longer be impacted by the project.
14. Vehicles shall not be driven or equipment operated in water covered portions of a stream or lake, or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed, except as otherwise provided for in the Agreement and as necessary to complete authorized work. Any equipment or vehicles driven and/or operated within or adjacent to the stream/lake shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be harmful to aquatic life.
15. Disturbance or removal of vegetation shall not exceed the limits approved by the Department.
16. Installation of bridges, culverts, or other structures shall be such that water flow is not impaired. Bottoms of temporary culverts shall be placed at stream channel grade; bottoms of permanent culverts shall be placed at or below stream channel grade.

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17. Water containing mud, silt or other pollutants from aggregate washing or other activities shall not be allowed to enter a lake or flowing stream, be placed in locations where they may be washed into a lake or stream, or be placed in locations that may be subjected to high storm flows.
18. If a stream's low flow channel, bed or banks/lake bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.
19. Staging/storage areas for equipment and materials shall be located outside of the stream.
20. No equipment maintenance shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.
21. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.
22. Spoil sites shall not be located within a stream/lake, where spoil shall be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.
23. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.
24. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the operator to ensure compliance.
25. The Operator shall provide a copy of this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement shall be readily available at work sites at all times during periods of active work and must be presented to any Department personnel, or personnel from another agency upon demand. All project personnel shall abide by all terms and conditions of this agreement.
26. The Department reserves the right to enter the project site at any time to ensure compliance with terms/conditions of this Agreement.
27. The Operator shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department at 4949 Viewridge Avenue, CA 92123, Attn: Pam Beare/SAA No. 5-2002-0187
28. It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Operator, and is not required by this agreement. It is further agreed all liability and/or incurred cost related to or arising out of the Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the Operator. The Operator agrees to hold harmless the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or any other damages.
29. The Operator shall request an extension of this agreement prior to its termination. Extensions may be granted for up to 12 months from the date of termination of the agreement and are subject to Departmental approval. The extension request and fees shall be submitted to the Department's South Coast Regional Office at the above address. If the Operator fails to request the extension prior to the agreement's termination then the Operator shall submit a new notification with fees and required

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information to the Department. Any activities conducted under an expired agreement is a violation of Fish and Game Code Section 1600 et seq.

30. The Department reserves the right to cancel this Agreement, after giving notice to the Operator, if the Department determines that the Operator has breached any of the terms or conditions of the Agreement.

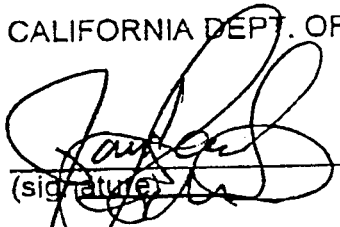
31. The Department reserves the right to suspend or cancel this Agreement for other reasons, including but not limited to the following:

- a. The Department determines that the information provided by the Operator in support of the Notification/Agreement is incomplete or inaccurate;
- b. The Department obtains new information that was not known to it in preparing the terms and conditions of the Agreement;
- c. The project or project activities as described in the Notification/Agreement have changed;
- d. The conditions affecting fish and wildlife resources change or the Department determines that project activities will result in a substantial adverse effect on the environment.


32. Before any suspension or cancellation of the Agreement, the Department will notify the Operator in writing of the circumstances which the Department believes warrant suspension or cancellation. The Operator will have seven (7) working days from the date of receipt of this notification to respond in writing to the circumstances described in the Department's notification. During the seven (7) day response period, the Operator shall immediately cease any project activities which the Department specified in its notification. The Operator shall not continue the specified activities until that time when the Department notifies the Operator in writing that adequate methods and/or measures have been identified and agreed upon to mitigate or eliminate the significant adverse effect.

## CONCURRENCE

CALIFORNIA DEPT. OF TRANSPORTATION

  
(signature) 7-18-02  
(date)  
Randy Sanchez, Proj. Mgr.  
(Type or print name and title)

CALIFORNIA DEPT. OF FISH AND GAME

  
(signature) 07/18/02  
(date)  
C.F. Raysbrook, Regional Manager